

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application: **Le et al.**

Serial No.: **09/747,535**

Filed: **December 21, 2000**

For: **Electronic Auction Method and  
System for Generating Off-Increment  
Proxy Bids**

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Group Art Unit: **3625**

Examiner: **Haq, Naeem U.**

Attorney Docket No.: **AUS920000742US1**

**35525**

PATENT TRADEMARK OFFICE  
CUSTOMER NUMBER

**RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

A Notice of Non-Compliant Appeal Brief was received by Applicant stating that the amendment filed on June 6, 2006 is considered non-compliant because “the “Summary” section of the brief fails to identify the “means plus function” language of claim 9 and the corresponding structure in the specification by page and line number.” A copy of the Notice of Non-Compliant Amendment is attached hereto.

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

In response to the Notification of Non-Compliant Appeal Brief dated August 15, 2006, please reconsider the holding of non-compliance as follows:

## **REMARKS**

In the Notification of Non-Compliant Appeal Brief, the Appeal Brief filed on June 6, 2006, was held defective for failure to identify the “means plus function” language of claim 9 and the corresponding structure in the specification by page and line number.

In order to address the Examiner’s concerns, a Supplemental Appeal Brief is submitted herewith. It is respectfully submitted that the Supplemental Appeal Brief filed herewith is in compliance with 37 C.F.R. § 41.37. Appellant respectfully requests that the Supplemental Appeal Brief be entered.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Date: August 23, 2006

Respectfully submitted,

/Francis Lammes/

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AGENT FOR APPLICANTS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: **Le et al.**

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For: **Electronic Auction Method and  
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Group Art Unit: **3625**

Examiner: **Haq, Naeem U.**

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**35525**  
PATENT TRADEMARK OFFICE  
CUSTOMER NUMBER

**SUPPLEMENTAL APPEAL BRIEF (37 C.F.R. 41.37)**

This supplemental brief is in response to the Notification of Non-Compliant Appeal Brief, issued on June 6, 2006.

No fees are believed to be required. If, however, any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

### **REAL PARTY IN INTEREST**

The real party in interest in this appeal is the following party: International Business Machines Corporation.

## **RELATED APPEALS AND INTERFERENCES**

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

## **STATUS OF CLAIMS**

### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1, 2, 5, 6, 9, 10, and 13-16.

### **B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims canceled: 3, 4, 7, 8, 11, and 12.
2. Claims withdrawn from consideration but not canceled: NONE.
3. Claims pending: 1, 2, 5, 6, 9, 10, and 13-16.
4. Claims allowed: NONE.
5. Claims rejected: 1, 2, 5, 6, 9, 10, and 13-16.
6. Claims objected to: NONE.

### **C. CLAIMS ON APPEAL**

The claims on appeal are: 1, 2, 5, 6, 9, 10, and 13-16.

## **STATUS OF AMENDMENTS**

There are no amendments after the final rejection.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

### ***Independent claims 1, 5, and 9:***

The present invention provides a method in an electronic auction for generating off-increment proxy bids. (Specification, page 14, lines 21-24) The present invention specifies a minimum increment for bidding on an item. (Specification, page 14, lines 27-28) The present invention receives a bid for said item from a first bidder that is a current high bid for said item. (Specification, page 14, line 29, to page 15, line 3) The present invention identifies a previously recorded proxy bid from a second bidder that is greater than said current high bid but not greater than said current high bid plus said minimum increment. (Specification, page 16, lines 1-10) The present invention generates by said electronic auction an off-increment bid that becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid. (Specification, page 16, line 10, to page 17, line 18)

The system recited in claim 5, as well as dependent claim 6, may be a system comprised of a bus system, such as system bus **206**, a communications system connected to the bus system, such as modem **218** or network adaptor **220**, a memory connected to the bus system, such as local memory **209**, wherein the memory includes a set of instructions; and a processing unit connected to the bus system, such as processor **202** or **204**, wherein the processing unit executes the set of instructions to perform the steps described in the specification at page 14, line 21, to page 17, line 22, or equivalent.

The instructions means for specifying, receiving, identifying and generating as recited in independent claim 9, as well as the instruction means for generating, determining and awarding as recited in dependent claim 10, may be instructions for the operating system, the object-oriented operating system, and applications or programs are located on storage devices, such as hard disk drive 326, and may be loaded into main memory 304 for execution by processor 302. (Specification, page 13, lines 21-25) A person having ordinary skill in the art would be able to derive computer instructions on a computer readable medium as recited in claim 9, as well as



dependent claim 10, given **Figure 4** and the corresponding description at page 14, line 21, to page 17, line 22, without undue experimentation.

***Independent claim 13:***

The present invention provides a method of awarding an auction item to a proxy bidder in an electronic auction. (Specification, page 14, lines 21-24 and page 15, lines 16-18) The present invention specifies a minimum increment for bidding on the item. (Specification, page 14, lines 27-28) The present invention receives, by the electronic auction, a first bid for said item from a first bidder wherein the first bid is a first high bid. (Specification, page 14, line 29, to page 15, line 3) The present invention identifies, by the electronic auction, a previously recorded proxy bid from a second bidder that is greater than said first high bid but not greater than said first high bid plus said minimum increment. (Specification, page 16, lines 1-10) The present invention records, by the electronic auction, the proxy bid as a current high bid. (Specification, page 17, lines 1-5)

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

### **A. GROUND OF REJECTION (Claims 1, 5, 9, and 13-16)**

Whether claims 1, 5, 9, and 13-16 are unpatentable under 35 U.S.C. § 112, first paragraph, as based on a disclosure which is not enabling.

### **B. GROUND OF REJECTION (Claims 1, 5, 9, and 13-16)**

Whether claims 1, 5, 9, and 13 are obvious under 35 U.S.C. § 103(a) in view of Fisher et al. (U.S. Patent No.6,243,691 B1).

## ARGUMENT

### A. 35 U.S.C. § 112, First Paragraph, Claims 1, 5, 9, and 13-16

As to claims 1, 5, 9, 13, 14, and 16, the Examiner states:

Referring to claims 1, 5, and 9: The Applicants' specification discloses that if at least one proxy bid exists which meets or exceeds the bid placed by a first bidder then calculating a proposed bid is critical or essential to the practice of the invention for generating off-increment proxy bids (see specification page 8, line 24 – page 9, line 19; Figure 4B item “432”). An element or process critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). In the present case claims 1, 5, and 9 recite generating off-increment proxy bids that have at least one proxy bid which meets or exceeds the bid placed by a first bidder. However, these claims do not recite the critical or essential feature of calculating a proposed bid as required by the Applicants specification. Therefore these claims stand rejected as being based on a disclosure which is not enabling.

Referring to claim 13: This claim recites an embodiment that has no support in the specification. In particular, the claim is directed to an embodiment having a minimum increment, a first high bid, a proxy bid which is greater than the first high bid and less than the first high bid plus a minimum increment without the steps of generating an off-increment bid and calculating a proposed bid (see specification page 8, line 13 – page 9, line 19). Since these claims do not recite critical or essential subject matter (i.e. generating an off-increment bid and calculating a proposed bid) necessary to practice the invention, they are deemed to be not enabled by the disclosure. An element or process critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

Referring to claims 14-16: These claims recite the step of calculating a proposed bid. However, the Applicants' specification discloses that this step is performed only for the purpose of generating an “off-increment bid” (see specification page 8, line 13 – page 9, line 19). Since these claims do not recite critical or essential subject matter (i.e. generating an off-increment bid) necessary to practice the invention, they are deemed to be not enabled by the disclosure. An element or process critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

Office Action dated March 9, 2006, pages 3-4.

Appellants respectfully submit that the Examiner clearly shows that Appellants specification enables the features of the invention as claimed. Furthermore, 35 U.S.C. § 112,

first paragraph, is a rejection for elements in a claim that are not supported by a disclosure. In the present rejection, the Examiner is alleging that the disclosure provides ample support, but the claims do not include some arbitrary selected features from the disclosure. It is not a requirement that Appellants claim each and every feature described in the disclosure.

In response to these arguments, the Examiner states:

Applicants' arguments, with respect to the rejection of claims 1, 5, 9, and 13-16 under 35 U.S.C. 112 enablement, have been considered but they are not persuasive. The Applicants have argued that a rejection under 35 U.S.C. 112, first paragraph is a rejection for elements in a claim that are not supported by the disclosure (see page 8 of "Remarks"). The Examiner respectfully disagrees. 35 U.S.C. 112, first paragraph deals with written description, enablement, and best mode. The Examiner rejected claims 1, 5, 9, 13 and 14-16 under written description and enablement and cited *In re Mayhew* to support the rejection under enablement. For this reason, the Examiner maintains the rejection of claims 1, 5, 9, and 13-16 under 35 U.S.C. 112, first paragraph for enablement.

The Examiner refers to page 8, line 24 to page 9, line 19 and element 432 of Figure 4B as the sections of Appellants specification that requires "calculating a proposed bid." Page 8, line 24 to page 9, line 19 of Appellants' specification reads as follows:

If at least one proxy bid exists which meets or exceeds the bid entered by the first bidder, the largest, earliest entered proxy bid which meets or exceeds the bid placed by the first bidder is then examined. A proposed bid is **generated which is equal to the bid placed by the first bidder plus the minimum increment**. If a determination is made that the proposed bid exceeds the proxy bid, the bidder who placed the proxy bid is awarded the item for the proxy bid. If, however, the proposed bid does not exceed the proxy bid, the bidder who placed the proxy bid is awarded the item for the proposed bid. Thus, an off-increment bid is generated which becomes a high bid for the item utilizing the proxy bid. The item is sold for an off-increment bid which was placed through a proxy bid.

For example, suppose bidder A has entered a bid for \$30 and also holds a proxy bid for \$40.00. Also suppose there is a minimum increment of \$5.00. If bidder B places a bid for \$37.00, bidder A will be awarded the item for \$40.00. In this example, a proposed bid was generated which was \$42.00. The proposed bid exceeded the proxy bid so the item was sold to bidder A for the proxy bid, \$40.00. If bidder A's proxy had been \$45.00 instead, bidder A would be awarded the item for the proposed bid of \$42.00. The proposed bid did not exceed bidder A's proxy bid of \$45.00 so the item was sold to bidder A for \$42.00. (emphasis added)

The description of element 432 of Figure 4B reads as follows:

Next, block 432 depicts calculating a proposed bid by **adding the minimum increment to the current high bid**. (emphasis added)

Appellants respectfully submit that the proposed bid generated on page 8, line 24 to page 9, line 19 of Appellants' specification, which is equal to the bid placed by the first bidder plus the minimum increment is equivalent to the proposed bid calculated in element 432 of Figure 4B by adding the minimum increment to the current high bid. Appellants respectfully submit that the generation on page 8, line 24 to page 9, line 19 and calculation in element 432 of Figure 4B are equivalent to generating by said electronic auction an off-increment bid that becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid as recited in claim 1, and similar subject matter recited in claims 5, 9, and 13.

Thus, Appellants respectfully submit that the Examiner's rejection of claims 1, 5, 9, and 13-16 to require the claims to recite the critical or essential feature of "calculating a proposed bid" is improper. Accordingly, Appellants respectfully request that the rejection of claims 1, 5, 9, and 13-16 under 35 U.S.C. § 112, first paragraph, not be sustained.

**B. 35 U.S.C. § 103, Alleged Obviousness, Claims 1, 2, 5, 6, 9, 10, and 13-16**

The Examiner rejects claims 1, 2, 5, 6, 9, 10, and 13-16 under 35 U.S.C. § 103(a) as being unpatentable over Fisher et al. (U.S. Patent No.6,243,691 B1). This rejection is respectfully traversed.

As to claim 1, the Examiner states:

Referring to claim 1, Fisher teaches a method and system for generating proxy bids in an electronic auction comprising:

- specifying a minimum increment for bidding on an item (Figure 2; column 5, lines 63-65);
- receiving a bid for said item from a first bidder which is a current high bid for said item (Figure 2; col. 5, lines 61-65);
- identifying a previously recorded proxy bid from a bidder (column 8, line 56 – column 9, line 6);

- generating by said electronic auction an bid which becomes a new high bid for said item utilizing said proxy bid, wherein said another bidder holds the new high bid for said item, further wherein said bid equals said bid received from said first bidder by said minimum increment, and wherein said equals said proxy bid (column 8, line 56 – column 9, line 6; column 12, lines 33-61).

Fisher does not teach that the proxy bid from a second bidder is greater than the current high bid. However, Fisher teaches that a plurality of bidders are allowed to establish the limit amount of their proxy bids when the bids are initially placed (column 8, lines 56-60). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to allow a bidder to set the limit of the proxy bid to whatever amount the bidder desired (e.g. greater than the current high bid). One of ordinary skill in the art would have been motivated to do so in order to allow the bidder to place a bid that he or she felt was competitive. Fisher does not explicitly teach that the proxy bid from a second bidder is not greater than said current high bid plus said minimum increment. However, Fisher teaches that the proxy bid is equal to the current high bid plus minimum increment (column 8, line 64 – column 9, line 3). The Examiner notes that this reads on Applicants' claim language because the claim does not preclude the proxy bid from being equal to the current high bid plus the minimum increment. The claim language states only that the proxy bid from a second bidder is "not greater than" said current high bid plus said minimum increment. A proxy bid which is equal to the to the current high bid plus the minimum increment meets this limitation because it is "not greater than" the current high bid plus said minimum increment. Fisher does not teach that the bid is an off-increment bid or that the bid "does not exceed" the first bid plus minimum increment or proxy bid. However, as already noted above, Fisher teachings read on these limitations because the claim language does not preclude the new bid from being equal to the first bid plus increment or proxy bid. A bid which is equal to the first bid plus the minimum increment or proxy bid meets this limitation because it "does not exceed" the first bid by said minimum increment or proxy bid.

Office Action dated March 9, 2006, pages 5-6.

Claim 1, which is representative of the other rejected independent claims 5, 9, and 13 with respect to similarly recited subject matter, reads as follows:

1. A method in an electronic auction for generating off-increment proxy bids, said method comprising the computer implemented steps of:  
specifying a minimum increment for bidding on an item;  
receiving a bid for said item from a first bidder that is a current high bid for said item;

identifying a previously recorded proxy bid from a second bidder that is greater than said current high bid but not greater than said current high bid plus said minimum increment; and

generating by said electronic auction an off-increment bid that becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

Fisher fails to teach or suggest identifying a previously recorded proxy bid from a second bidder that is greater than said current high bid but not greater than said current high bid plus said minimum increment and generating by said electronic auction an off-increment bid that becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

Fisher is directed to conducting a multi-person, interactive auction, in a variety of formats, without using a human auctioneer to conduct the auction. The system allows a group of bidders to interactively place bids over a computer or communications network. Those bids are recorded by the system and the bidders are updated with the current auction status information. When appropriate, the system closes the auction from further bidding and notifies the winning bidders and losers as to the auction outcome.

The Examiner acknowledges that “Fisher does not explicitly teach that the proxy bid from a second bidder is not greater than said current high bid plus said minimum increment.” The present rejection relies only on the fact that a plurality of bidders are allowed to establish the limit amount of their proxy bids when the bids are initially placed and that Fisher places no restrictions on the upper or lower boundaries of the limit price of the proxy bids. The presently claimed invention identifies a previously recorded proxy bid from a second bidder that is greater than said current high bid but not greater than said current high bid plus said minimum increment. Nowhere in Fisher is a minimum increment taught or suggested. The Examiner alleges that Fisher teaches that the proxy bid is equal to the current high bid plus minimum increment at column 8, line 64, to column 9, line 3, which reads as follows:

The bid manager then checks 67 to see if there are any active proxy bids marked as unsuccessful. A proxy bid is a special bid type that allows auction

manager 26 to automatically bid on the bidder's behalf up to a limited amount established by the bidder when his or her initial bid is placed. The auction manager will increase the bid as necessary up to the limit amount. This feature allows the customer to get the lowest possible price without exceeding a limit preferably established when the bid is entered. If there are active proxy bids marked as unsuccessful, then the bid manager increments 69 the proxy bids by a preset bid increment. This procedure of sorting 65 marking 66 bids and incrementing 69 the proxy bids as required continues until either there are no additional proxy bids marked as unsuccessful or the proxy limits have been reached on the proxy bids. At this point, bid database 31 is updated 68 with the marked bids. This process is then repeated for each merchandise lot open at the current time for bidding by customers.

(column 8, line 56, to column 9, line 6)

In this section, Fisher describes a proxy bid that is a special bid type that allows an auction manager to automatically bid on the bidder's behalf up to a limited amount established by the bidder when his or her initial bid is placed. The auction manager will increase the bid **as necessary** up to the limit amount. This section of Fisher does not teach or suggest generating by said electronic auction an off-increment bid that becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid. Fisher merely teaches a proxy bit that is only limited by a limited amount established by the bidder. Thus, while a bid from a second bidder may fall between a current high bid and said current high bid plus said minimum increment, there is no system in Fisher to identify such a bid using such restrictions as recited in claim 1.

Furthermore, the description by Fisher to adjust a bid upward "using a percentage of the bid as opposed to a minimum increment" is insufficient to obviate the step of generating an off-increment bid by utilizing a proxy bid and is wholly insufficient to ensure that the off-increment bid is increased from the received bid by an amount not equal to the minimum increment. Absent some teaching, suggestion, or incentive to modify Fisher in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the Appellants' disclosure as a template to make the necessary changes to reach the claimed invention.



Furthermore, Fisher does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Fisher actually teaches away from the presently claimed invention. For example, as noted by the Examiner, Fisher teaches a method to guarantee a proxy bidder the lowest possible price (column 12, lines 58-61) as opposed to a technique that enables off-increment proxy bids such that the deficiencies of prior art systems resulting in a seller being disadvantaged by selling an item for a lower price than that offered by a proxy bid when the proxy bid exceeds a high bid by an amount but not greater than a minimum auction increment, as in the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement off increment proxy bids by Fisher, one of ordinary skill in the art would not be led to modify Fisher to reach the present invention when the reference is examined as a whole.

In view of the above, Appellants respectfully submit that Fisher fails to teach or suggest all of the features of independent claims 1, 5, 9, and 13. At least by virtue of their dependency on claims 1, 5, 9, and 13, the specific features of claims 2, 6, 10, and 14-16 are not taught or suggested by Fisher. Accordingly, Appellants respectfully request that the rejection of claims 1, 2, 5, 6, 9-10, and 13-16 under 35 U.S.C. § 103, not be sustained.

### **CONCLUSION**

In view of the above, Appellants respectfully submit that claims 1, 2, 5, 6, 9, 10, and 13-16 are allowable over the cited prior art and that the application is in condition for allowance. Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to not sustain the rejections set forth in the Final Office Action.

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## **CLAIMS APPENDIX**

The text of the claims involved in the appeal are:

1. A method in an electronic auction for generating off-increment proxy bids, said method comprising the computer implemented steps of:

specifying a minimum increment for bidding on an item;

receiving a bid for said item from a first bidder that is a current high bid for said item;

identifying a previously recorded proxy bid from a second bidder that is greater than said current high bid but not greater than said current high bid plus said minimum increment; and

generating by said electronic auction an off-increment bid that becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

2. The method according to claim 1, wherein the step of generating an off-increment bid further comprises the steps of:

generating a proposed bid by said electronic auction, said proposed bid being equal to said minimum increment plus a current high bid for said item;

determining if said proposed bid exceeds said proxy bid; and

in response to a determination that said proposed bid does exceed said proxy bid, awarding said item to said second bidder for said off-increment bid, wherein said off-increment bid is equal to said proxy bid.

5. An electronic auction system for generating off-increment proxy bids, comprising:

a bus system;

a communications system connected to the bus system;

a memory connected to the bus system, wherein the memory includes a set of

instructions; and

a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to identify a minimum increment for bidding on an item; receive a bid received for said item from a first bidder that is a current high bid for said item; identify a previously recorded proxy bid from a second bidder that is greater than said current high bid but not greater than said current high bid plus said minimum increment; and generate an off-increment bid by said electronic auction that becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

6. The electronic auction system according to claim 5, wherein the processing unit further executes the set of instructions to generate a proposed bid, said proposed bid being equal to said minimum increment plus a current high bid for said item; determine if said proposed bid exceeds said proxy bid; and, in response to a determination that said proposed bid does exceed said proxy bid, award said item to said second bidder for said off-increment bid, wherein said off-increment bid is equal to said proxy bid.

9. A computer readable medium in an electronic auction including computer usable program code for generating off-increment proxy bids, said computer usable program code comprising:

instruction means for specifying a minimum increment for bidding on an item;

instruction means for receiving a bid for said item from a first bidder that is a current high bid for said item;

instruction means for identifying a previously recorded proxy bid from a second bidder that is greater than said current high bid but not greater than said current high bid plus said minimum increment; and

instruction means for generating an off-increment bid that becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

10. The computer readable medium according to claim 9, wherein the instruction means for generating an off-increment bid further comprises:

instruction means for generating a proposed bid, said proposed bid being equal to said minimum increment plus a current high bid for said item;

instruction means for determining if said proposed bid exceeds said proxy bid; and

instruction means for in response to a determination that said proposed bid does exceed said proxy bid, awarding said item to said second bidder for said off increment bid, wherein said off-increment bid is equal to said proxy bid.

13. A method of awarding an auction item to a proxy bidder in an electronic auction, the method comprising the computer implemented steps of:

specifying a minimum increment for bidding on the item;

receiving, by the electronic auction, a first bid for said item from a first bidder wherein the first bid is a first high bid;

identifying, by the electronic auction, a previously recorded proxy bid from a second bidder that is greater than said first high bid but not greater than said first high bid plus said minimum increment; and

recording, by the electronic auction, the proxy bid as a current high bid.

14. The method of claim 13, further comprising the step of:

calculating, by the electronic auction, a proposed bid that is equal to a sum of the first high bid and the minimum increment.

15. The method of claim 14, further comprising the step of:

comparing the proposed bid with the proxy bid.

16. The method of claim 15, further comprising:

determining, by the electronic auction, the proposed bid exceeds the proxy bid, wherein the recording step is performed responsive to determining the proposed bid exceeds the proxy bid.

## **EVIDENCE APPENDIX**

There is no evidence to be presented.

## **RELATED PROCEEDINGS APPENDIX**

There are no related proceedings.



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,535	12/21/2000	Hanh Kim Le	AUS920000742US1	2079

35525 7590 08/15/2006

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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## CLIENT DOCKET INFORMATION

Client Name AUS920000742US1

File No. \_\_\_\_\_

DATE	ACTION DOCKETED
08.15.06	Response to Notice of Non-Compliant Appeal & Brief
Docketed By <u>mg</u>	Date <u>08.17.06</u>
Checked By <u>dw</u>	Date <u>08.17.06</u>
Attorney Initials _____	Date _____



**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

09/747,535

Applicant(s)

LE ET AL.

Examiner

Naeem Haq

Art Unit

3625

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 06 June 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

The "Summary" section of the brief fails to identify the "means plus function" language of claim 9 and the corresponding structure in the specification by page and line number.

Naeem Haq, Primary Examiner

